

EDWIN W. DUVALL AND
PETER SAUSSAR

vs.

JOSEPH J. SPEED AND
JOSIAS PENNINGTON.

JULY TERM, 1848.

[TRUSTEES UNDER THE INSOLVENT LAWS—SALES BY—JUDGMENT—LIEN OF.]

A TRUSTEE selling under a decree of the Court of Chancery, as a general rule, sells the title of the parties to the suit, and nothing more; and though a purchaser, discovering a defect in his title at the proper time, may be relieved from his purchase by asking for a rescision of the sale, he cannot be permitted, whilst holding on to his purchase, to insist upon having his title perfected by the application of the proceeds of sale, to the extinguishment of the claims of incumbrances, not parties to the suit.

A judgment creditor not a party to the suit, is not bound to seek payment out of the proceeds of sales in the hands of the trustee, but may prosecute his lien against the property, after its conveyance to the purchaser.

The fact, that the trustee of an insolvent debtor was a party to the suit, does not dispense with the necessity of making the creditors themselves parties.

[At the October term, 1840, of Anne Arundel County Court, a judgment was rendered in favor of James Dunn and John Sloan, for the use of J. J. Speed and J. Pennington, as trustees and receivers, against one Vachel Sevier, for the sum of \$300, with interest thereon, from the 14th December, 1840, the day on which the judgment was signed, and costs; upon this judgment a writ of fieri facias was sued out, and duly returned by the sheriff at April term, 1841, as partially satisfied and "nulla bona" the residue.

On the 17th May, 1843, Vachel Sevier and wife, executed a mortgage of certain houses and lots, in the city of Annapolis, of which he was seized in fee at the time of the rendition of the above judgment, together with other real property, in favor of one John T. Hodges, to secure to him the payment of a large sum of money, and on the 13th November, 1844, the said Hodges, filed in the High Court of Chancery his bill of complaint, against Sevier and wife, praying a sale of the mortgaged premises for the payment of his debt. Before the defendants answered this bill, viz. on the 22d October, 1845, Sevier ap-